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2012 NOV 27 AM 9: 26

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MURs 6486 and 6491
Unknown Respondents)

SECOND GENERAL COUNSEL'S REPORT

SENSITIVE

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I. ACTIONS RECOMMENDED

(1) Take no further action and (2) close the files.

II. INTRODUCTION

These matters involve two billboards in Lufkin, Texas that expressly advocated the defeat of President Obama but lacked disclaimers identifying who paid for them and whether they were authorized by a federal candidate. On April 24, 2012, the Commission found reason to believe ("RTB") that unknown respondents violated the disclaimer and independent expenditure reporting provisions of the Federal Election Campaign Act of 1971, as amended, in connection with the billboards and authorized an investigation. *See* 2 U.S.C. §§ 441d, 434(c).

We now know the identity of the person who paid for the billboards and, as detailed below, do not believe that these matters warrant further expenditure of Commission resources. Thus, we recommend that the Commission take no further action and close the files.

III. SUMMARY OF INVESTIGATION

The complaints in these matters identified Mark Hicks as the owner of the billboard structures. Hicks initially refused to identify the billboard purchaser, either in his response to the complaints or after informal requests pursuant to the Commission's RTB findings. *See* Mark Hicks and JM Management Responses at 1 (Sept. 1, 2011); e-

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1 mails from Mark Hicks to Elena Paoli, Staff Attorney, FEC (June 11, 2012, 03:50 PM
2 CST, 05:35 PM CST). Following the Commission's Order that he produce information,
3 however, Hicks provided a copy of the invoice related to the rental of the billboards and
4 production costs of the advertisements. *See* e-mail from Hicks to Paoli (Sept. 4, 2012,
5 01:25 PM CST). The invoice shows that the billboards cost \$10,500 and identified the
6 purchaser as "Winston Ranch." In a phone call with a Commission investigator, Hicks
7 identified Virginia Winston as the billboard purchaser.

8 On October 11, 2012, we notified Winston of the two original complaints,
9 summarized the Commission's RTB findings, and described the information linking her
10 to the billboards. In a handwritten letter dated October 22, 2012, Winston responded that
11 she is an 82-year-old widow with health issues and had no idea that billboards require
12 disclaimers. *See* Winston Resp. at 1 (Oct. 22, 2012). She said that she copied the
13 billboard from one she saw on the internet, which did not have a disclaimer. *Id.* Winston
14 further said that she did not work with or receive help or suggestions from any candidate
15 or political party. *Id.* She also expressed a desire to resolve the matter quickly. *Id.*

16 Although the cost of placing the ads on the billboards — \$10,500 — was not de
17 minimis, circumstances here counsel against further pursuit of an enforcement action.
18 Winston says in her handwritten letter that she is elderly and infirm; she has been
19 forthright and cooperative since obtaining notice of the apparent violations, lacks
20 experience with election laws, did not apparently intend to violate the law, and seems
21 highly unlikely to repeat the violations. She also denies receiving any help from or
22 coordinating her activities with any political party or candidate.

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Given this record, as a matter of prosecutorial discretion, we recommend that the Commission not pursue these related matters further and close the files. *See Heckler v. Chaney*, 470 U.S. 821 (1985).¹

IV. RECOMMENDATIONS

1. Take no further action in MURs 6486 and 6491.
2. Approve the appropriate letters.
3. Close the files.

Anthony Herman
General Counsel

BY

11/27/12
Date

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¹ See also MUR 5646 (Jesse Burchfield) (Commission found RTB that treasurer John Buchalski violated Act in his personal capacity but took no further action after learning of his limited role, advanced age, ill health, and unlikelihood of serving in same capacity in the future).